
1997 Wis Eth Bd 1
DISQUALIFICATION; IMPROPER USE OF OFFICE

The Ethics Board advises that a legislator not advocate for, or participate in discussions, deliberations, or votes on funding a state contract with a foundation in which the legislator's spouse is executive director. If the biennial budget appropriates money to the foundation, the legislator may participate in debate, discussion, and voting on all other budget issues, and vote on the budget itself. (April 10, 1997)

Facts

¶ 1. This opinion is based upon these understandings:

- a. You are a member of the Legislature and a state public official.
- b. Your spouse is the founder and executive director of a not-for-profit foundation.
- c. Your spouse receives compensation from the foundation for the services your spouse provides to it.

Questions

¶ 2. The Ethics Board understands your questions to be:

1. Consistent with laws administered by the Ethics Board, may you advocate for state funding of a contractual agreement between the state and the foundation?
2. If funding of a contractual agreement with the foundation is part of the biennial budget, will laws administered by the Ethics Board restrict your voting on the budget, or any part thereof?

Discussion

¶ 3. Two provisions of the Ethics Code are most pertinent to your questions — §§19.45(2) and 19.46(1), *Wisconsin Statutes*. These sections, reduced to their elements, provide that:

No state public official
May use his or her public position or office
To obtain anything of substantial value or to produce a substantial benefit
For the private benefit
Of the official, a member of the official's immediate family, or an
organization with which the official is associated; and

No state public official
May take any official action
Substantially affecting a matter
In which the official, a member of the official's immediate family, or an
organization with which the official is associated
Has a substantial financial interest.¹

¶ 4. You are a state public official by virtue of being a member of the Legislature.² Your spouse is a member of your immediate family.³ The

¹ Section 19.45(2), *Wisconsin Statutes*, provides:

19.45 Standards of conduct; state public officials. (2) No state public official may use his or her public position or office to obtain financial gain or anything of substantial value for the private benefit of himself or herself or his or her immediate family, or for an organization with which he or she is associated. This subsection does not prohibit a state public official from using the title or prestige of his or her office to obtain contributions permitted and reported as required by ch. 11.

Section 19.46(1), *Wisconsin Statutes*, provides:

19.46 Conflict of Interest Prohibited; Exception. (1) Except in accordance with the board's advice under sub. (2) and except as otherwise provided in sub. (3), no state public official may:

(a) Take any official action substantially affecting a matter in which the official, a member of his or her immediate family, or an organization with which the official is associated has a substantial financial interest.

(b) Use his or her office or position in a way that produces or assists in the production of a substantial benefit, direct or indirect, for the official, one or more members of the official's immediate family either separately or together, or an organization with which the official is associated.

² Section 19.42(13)(c), *Wisconsin Statutes*.

foundation appears to be an organization with which you are associated.⁴ State funding of a contract with the foundation is likely to be a substantial benefit and of substantial value to the foundation, as well as to your spouse to the extent that state funds will be used to provide your spouse's compensation. Participating in discussions, debate, or votes to provide state funding to contract with the foundation would be a use of office.⁵ Therefore, we advise that you not advocate or vote for funding of a state contract with the foundation.⁶

¶ 5. However, if funding for the foundation is included in the biennial budget, you may participate fully in debate, discussion, and voting on all other budget issues, and vote on the budget itself. Public policy favors a state public official's exercise of his or her official duties.⁷ Foundation funding would be a very small part of any budget. Your vote would only indirectly have the effect of providing that funding because your vote would be on the budget as a whole.

³ Section 19.42(7), *Wisconsin Statutes*, provides that "immediate family" means an individual's spouse.

⁴ Section 19.42(2), *Wisconsin Statutes* provides:

(2) "Associated", when used with reference to an organization, includes any organization in which an individual or a member of his or her immediate family is a director, officer or trustee, or owns or controls, directly or indirectly, and severally or in the aggregate, at least 10% of the outstanding equity or of which an individual or a member of his or her immediate family is an authorized representative or agent.

The foundation appears to be an organization with which you are associated because, as the foundation's executive director, your spouse appears to be an authorized representative or agent of the organization.

⁵ 1995 Wis Eth Bd 6, ¶4; 1995 Wis Eth Bd 3, ¶4.

⁶ Our advice is consonant with common law principles. The established rule of the common law is that a member of a legislative body is disqualified to vote on propositions in which he or she has a direct pecuniary interest. *The Board of Supervisors of Oconto County v. Hall*, 47 Wis. 208 (1879). As the Attorney General has said:

A pecuniary interest sufficient to disqualify exists . . . where it is one which is personal or private to the member, not such interest as he has in common with all other citizens or owners of property, nor such as arises out of the power of the [government] to tax his property in a lawful manner.

36 Op. Att'y Gen. 45 (1947). See also 1995 Wis Eth Bd 3; 67 C.J.S. Officers §204.

⁷ 1995 Wis Eth Bd 3, ¶12; 14 Op. Eth. Bd. 41 (1993); 14 Op. Eth. Bd. 25 (1992).

Advice

¶ 6. The Ethics Board advises that you not advocate for, or participate in discussions, deliberations, or votes on funding a state contract with a foundation in which your spouse is executive director. If the biennial budget appropriates money to the foundation, you may participate in debate, discussion, and voting on all other budget issues, and vote on the budget itself.

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